

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

COUNTRY MUTUAL INS. CO.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 4:10CV540 RWS
	)	
SCHIFANO & SONS, LLC,	)	
	)	
Defendants.	)	

**MEMORANDUM AND ORDER**

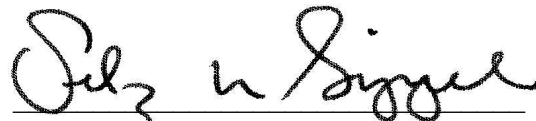
Country Mutual Insurance Company seeks a declaration that it is not obligated to defend or indemnify Schifano & Sons in an underlying lawsuit brought against Schifano by Phillip and Michelle Thompson. The lawsuit arises out of two houses the Thompsons rented from Schifano. According to the Thompsons, the houses contained mold and had other defects which rendered them uninhabitable. Country Mutual contends that it owes no duty to defend Shifano in the underlying lawsuit because the insurance policies applicable to the properties exclude the Thompsons' claims from coverage. In opposition to summary judgment, Schifano argues that Country Mutual has failed to name a necessary party, Petropolis, Inc., as a defendant. Petropolis, not Schifano, owns one of the properties at issue here, and Schifano is named as an additional insured on that policy. According to Schifano, Petropolis notified Country Mutual that the Thompsons' lawsuit was asserting claims against Petropolis, and Petropolis asked Country Mutual whether the policy provided coverage for the Thompsons' claims. Despite this, Country Mutual has failed to name Petropolis as a party to this declaratory judgment action, arguing only that it does not need to do so because Petropolis has not yet been sued by the Thompsons and that any ruling by this Court about policy coverage would not apply to Petropolis.

On the record before it, however, the Court is not persuaded by Country Mutual's arguments. Country Mutual seeks a declaration that the policy excludes coverage. Petropolis is the primary insured on this policy. Given that Petropolis has notified Country Mutual of the Thompsons' lawsuit, that it believes the Thompsons' lawsuit asserts claims against Petropolis, that Petropolis has requested clarification as to coverage, and the identity of interest between Schifano and Petropolis, I simply cannot find on this record that Country Mutual is entitled to judgment as a matter of law on all claims asserted in the complaint. Country Mutual provided the Court with no authority demonstrating that, under these facts, it is proper to decide coverage issues with respect to an additional insured without naming the primary insured as a defendant. This is not, as Country Mutual argues, a question of liability which will be decided in state courts. Therefore, the Court will deny Country Mutual's motion for summary judgment without prejudice at this time so that Country Mutual can properly address this issue, either through briefing or pleading practice.

Accordingly,

**IT IS HEREBY ORDERED** that plaintiff's motion for summary judgment [#29] is denied without prejudice.

**IT IS FURTHER ORDERED** that plaintiff's motion for default judgment against defendants Phillip and Michelle Thompson [#17] is granted.

  
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RODNEY W. SIPPEL  
UNITED STATES DISTRICT JUDGE

Dated this 30th day of September, 2010.